

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re patent application of:

FARWICK, *et al.*

Appl. No.: 09/834,722

Filed: April 16, 2001

For: **New Nucleotide Sequences which
Code for the menE Gene**

Art Unit: 1652

Examiner: C. Fronda

Atty. Dkt. 21123/280112

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Response to Restriction Requirement

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action dated December 13, 2002, in which the Examiner imposed a restriction requirement on the claims in the above-captioned application, Applicants hereby elect the inventions of restriction Group I. This includes claims 1-7, 9 and 17 directed to an isolated polynucleotide coding for the menE gene, a vector and bacteria transformed with the vector. It is respectfully requested that the claims in the non-elected restriction groups be cancelled without prejudice.

This election is made with traverse.

Applicants respectfully submit that the number of restriction groups in this case is excessive. Restriction Groups II-VIII are related by the fact that they all involve processes in which the activity of the menE gene product is reduced. If the gene itself is patentable (claims of restriction Group I), then all of the claims in these other groups should be patentable as well (at least with respect to prior art considerations). This Office Action is not at all in keeping with restriction requirements that have been imposed by other Examiners for very similar cases and in light of the considerations, discussed herein, Applicants submit that it is unreasonable to require the payment of nine filing fees to prosecute these claims. It is

therefore respectfully requested that the present division of restriction groups be reconsidered and reduced.

Applicants do not believe that any fee is required for the filing of the present document. Nevertheless, if one or more extensions of time are required to prevent the application from going abandoned, then such extensions of time are hereby petitioned and any fees therefor may be charged to our Deposit Account No. 03-3975, under Order No. 21123/280112.

If the Examiner believes that a phone call may help to expedite this matter, the Examiner is invited to call Applicants' undersigned attorney at (703) 905-2173.

Respectfully submitted,

PILLSBURY WINTHROP LLP

By: Michael A. Sanzo

Michael A. Sanzo
Reg. No. 36,912
Attorneys for Applicants

Date: March 13, 2002
1600 Tysons Boulevard
McLean, VA 22120
Tel. (703) 905-2173